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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,144	02/27/2004	Jeffrey A. Tilton	25353A	9228

22889 7590 07/24/2006

OWENS CORNING
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EXAMINER	
PIZIALI, ANDREW T	
ART UNIT	**PAPER NUMBER**
1771	

DATE MAILED: 07/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/789,144	TILTON ET AL.	
	Examiner	Art Unit	
	Andrew T. Piziali	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 June 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-46* is/are pending in the application.

4a) Of the above claim(s) *6,7,14,16-37 and 41* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-5,8-13,15,38-40 and 42-46* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *27 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/7/2006 has been entered.

Election/Restrictions

2. Claim 41 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species. See the restriction requirement mailed on 7/12/2005. Applicant elected Species 1 from Species Group I, drawn to a liner/insulator wherein the plurality of ribs extend parallel to one another. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/5/2005.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 9-11 and 42-44 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification

fails to describe how to make the claimed liner/insulator such that the liner/insulator possesses the claimed properties.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1, 3, 5, 9-13, 15, 38-40 and 42-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,497,950 to Haile in view of USPN 5,660,908 to Kelman et al. (hereinafter referred to as Kelman).

Regarding claims 1, 3, 5, 9-13, 15, 38-40 and 42-46, Haile discloses that it is known in the headliner art to use thermoplastic bicomponent staple fibers (considered to read on the claimed thermoplastic staple fibers and the claimed thermoplastic bicomponent fibers) and glass staple fibers (see entire document including column 1, line 45 through column 2, line 8, column 10, lines 49-58, column 12, lines 10-60, column 13, line 22-64, column 14, lines 27-50, and column 17, lines 52-57). Haile is silent with regards to specific headliner designs, therefore, it would have been necessary and thus obvious to look to the prior art for conventional headliner designs. Kelman provides this conventional teaching showing that it is known in the headliner art to use a liner/insulator design comprising a base layer of fibrous material and a plurality of ribs of fibrous material thermally bonded to the base layer (see entire document including column 1, lines 41-49, column 2, lines 38-47, column 3, lines 48-57, and Figure 3). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was

made to make the headliner of Haile in the design disclosed by Kelman, motivated by the expectation of successfully practicing the invention of Haile and because it is within the general skill of a worker in the art to select a known headliner design on the basis of its suitability and desired characteristics.

Regarding claims 3 and 39, Haile discloses the use of polyester thermoplastic fibers (column 2, lines 26-39).

Regarding claims 5 and 40, Kelman discloses that the ribs extend parallel to one another (Figure 3).

Regarding claims 9-11 and 42-44, Haile does not specifically mention the wet compression percentage, dry compression percentage, or dry wet recovery percentage, but considering that the liner/insulator taught by the applied prior art is identical to the claimed liner/insulator in terms of structure and materials, it appears that the liner/insulator taught by the applied prior art inherently possesses the claimed properties.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claim 12, Haile does not specifically mention using the liner/insulator as an automotive undercarpet, but since the claim fails to further structurally define the liner/insulator, it appears that the liner/insulator taught by the applied prior art can be considered an automotive undercarpet.

Regarding claims 13 and 45, Haile does not specifically mention making the liner/insulator from scrap fibrous material, but Haile does disclose that the liner/insulator is made of a fibrous material. It is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article.

Regarding claims 15 and 46, Kelman discloses that the liner/insulator may be a nonlaminate (Figure 3).

7. Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,497,950 to Haile in view of USPN 5,660,908 to Kelman as applied to claims 1, 3, 5, 9-13, 15, 38-40 and 42-46 above, and further in view of USPN 5,892,187 to Patrick.

Kelman is silent with regards to the distance between ribs and the width of the ribs, therefore, it would have been necessary and thus obvious to look to the prior art for conventional distances between ribs and rib widths. Patrick provides this conventional teaching showing that it is known in the headliner art to vary the distance between ribs, and the width of the ribs, based on the desired sound or noise to be attenuated (see entire document including column 4, lines 52-67 and column 5, lines 44-57). Patrick specifically discloses that the width of the ribs may be about 22 mm or less (0.87 inches or less) and illustrates a distance between the ribs about equal to the specifically mentioned rib width (column 5, lines 44-57 and Figures 1-3). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was

made to make the ribs spaced apart at least about 0.25 inches and with a width of between about 0.5 to about 3.0 inches, as taught by Patrick, motivated by the expectation of successfully practicing the invention taught by the prior art and based on the desired sound or noise to be attenuated.

8. Claims 1, 3, 5, 9-13, 15, 38-40 and 42-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,497,950 to Haile in view of USPN 5,660,908 to Kelman et al. (hereinafter referred to as Kelman) in view of USPN 5,399,422 to Dijkema et al. (hereinafter referred to as Dijkema).

Regarding claims 1, 3, 5, 9-13, 15, 38-40 and 42-46, Haile discloses that it is known in the headliner art to use thermoplastic bicomponent staple fibers (considered to read on the claimed thermoplastic staple fibers and the claimed thermoplastic bicomponent fibers) and glass staple fibers (see entire document including column 1, line 45 through column 2, line 8, column 10, lines 49-58, column 12, lines 10-60, column 13, line 22-64, column 14, lines 27-50, and column 17, lines 52-57). Haile is silent with regards to specific headliner designs, therefore, it would have been necessary and thus obvious to look to the prior art for conventional headliner designs. Kelman provides this conventional teaching showing that it is known in the headliner art to use a liner/insulator design comprising a base layer of fibrous material and a plurality of ribs of fibrous material thermally bonded to the base layer (see entire document including column 1, lines 41-49, column 2, lines 38-47, column 3, lines 48-57, and Figure 3). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the headliner of Haile in the design disclosed by Kelman, motivated by the expectation of successfully practicing the invention of Haile and because it is within the general

skill of a worker in the art to select a known headliner design on the basis of its suitability and desired characteristics.

In the event that it is shown that Haile does not disclose the use of glass staple fibers with sufficient specificity, Dijkema is relied upon to disclose that it is known in the headliner art to use glass staple fibers (see entire document including the paragraph bridging columns 2 and 3 and column 4, lines 43-52). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the glass fibers in staple fiber form, as taught by Dijkema, because it is within the general skill of a worker in the art to select a known fiber form on the basis of its suitability and desired characteristics.

Regarding claims 3 and 39, Haile discloses the use of polyester thermoplastic fibers (column 2, lines 26-39).

Regarding claims 5 and 40, Kelman discloses that the ribs extend parallel to one another (Figure 3).

Regarding claims 9-11 and 42-44, Haile does not specifically mention the wet compression percentage, dry compression percentage, or dry wet recovery percentage, but considering that the liner/insulator taught by the applied prior art is identical to the claimed liner/insulator in terms of structure and materials, it appears that the liner/insulator taught by the applied prior art inherently possesses the claimed properties.

Regarding claim 12, Haile does not specifically mention using the liner/insulator as an automotive undercarpet, but since the claim fails to further structurally define the liner/insulator, it appears that the liner/insulator taught by the applied prior art can be considered an automotive undercarpet.

Regarding claims 13 and 45, Haile does not specifically mention making the liner/insulator from scrap fibrous material, but Haile does disclose that the liner/insulator is made of a fibrous material. It is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article.

Regarding claims 15 and 46, Kelman discloses that the liner/insulator may be a nonlaminate (Figure 3).

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Kelman is silent with regards to the distance between ribs and the width of the ribs, therefore, it would have been necessary and thus obvious to look to the prior art for conventional distances between ribs and rib widths. Patrick provides this conventional teaching showing that it is known in the headliner art to vary the distance between ribs, and the width of the ribs, based on the desired sound or noise to be attenuated (see entire document including column 4, lines 52-67 and column 5, lines 44-57). Patrick specifically discloses that the width of the ribs may be about 22 mm or less (0.87 inches or less) and illustrates a distance between the ribs about equal to the specifically mentioned rib width (column 5, lines 44-57 and Figures 1-3). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the ribs spaced apart at least about 0.25 inches and with a width of between about 0.5 to about 3.0 inches, as taught by Patrick, motivated by the expectation of successfully

practicing the invention taught by the prior art and based on the desired sound or noise to be attenuated.

Response to Arguments

10. Applicant's arguments have been considered but are moot in view of the new grounds of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

atp

7/14/06
ANDREW T. PIZIALI
PATENT EXAMINER